



CV 01-1935 #1

FILED ENTERED
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AT SEATTLE
CLERK U S DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID F POTTER,

Plaintiff,

v

THE CITY OF SEATTLE,
a municipal corporation,

and

JOHN DOE, in his capacity as a police
officer for the City of Seattle and as an
individual,

and

PAUL SCHELL, in his capacity as Mayor
of the City of Seattle and as an individual,

and

NORMAN STAMPER, in his capacity as
Chief of Police of the City of Seattle and
as an individual,

Defendants

CV 01 1935
COMPLAINT FOR DAMAGES

COMPLAINT FOR DAMAGES - 1

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INTRODUCTION

1 This is a civil action seeking damages against the above-named defendants. The
2 civil claims include a common law tort cause of action, statutory causes of action, and offenses
3 committed under color of law resulting in a deprivation of rights secured by the Constitution
4 and laws of the United States of America.

JURISDICTION AND VENUE

2 This Court has personal and subject matter jurisdiction over plaintiff's federal
3 civil rights claims under Title 42, United States Code, § 1983, and Title 28, United States
4 Code, §§ 1331 and 1343(a)(3).

3 This Court has pendent jurisdiction over plaintiff's state law claim and over
4 defendants as to said claim, pursuant to Title 28, United States Code, § 1367 (Judicial
5 Improvements Act of 1990), Public Law No. 101-650, 104 Stat. 5089 (1990).

4 The acts and omissions complained of herein occurred in King County,
5 Washington, and the defendants are residents and citizens of the State of Washington.

5 Plaintiff is a resident and citizen of the state of Oregon.

6 The matter in controversy exceeds the sum or value of \$75,000, exclusive of
7 interests and costs.

7 This Court has diversity jurisdiction over plaintiff's claims pursuant to Title 28,
8 United States Code, § 1332.

8 Venue in this Court is proper pursuant to Title 28, United States Code, § 1391

3
4 PARTIES

5 9 Plaintiff David F Potter is a citizen of the United States and a citizen and
6 resident of the state of Oregon Defendant City of Seattle is sued directly under Title 42,
7 United States Code, § 1983 as to the federal causes of action, and under the doctrine of
8 *respondeat superior* as to the state cause of action
9

10 10 Defendant Paul Schell was, at all times pertinent to this suit, the Mayor of the
11 City of Seattle, with overall executive and supervisory responsibility for the acts of defendants
12 described herein
13

14 11 At all times material to this complaint, defendant Schell was an agent and an
15 employee of defendant City of Seattle, and was acting within the scope of his employment and
16 under color of the laws of the State of Washington
17

18 12 Defendant Paul Schell is sued in his individual capacity and in his official
19 capacity as an agent and employee of defendant City of Seattle.

20 13 Defendant City of Seattle includes, as one of its agencies, the Seattle Police
21 Department

22 14 At all times material to this complaint, defendant Norman Stamper was
23 employed by defendant City of Seattle as the duly-commissioned Chief of Police, and, as such,
24 had executive and supervisory responsibility for the acts of the Seattle police officers during
25 the events described herein Defendant Stamper possessed final policy-making and decisional
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2 authority regarding issues of law enforcement, discipline and training within the City of
3 Seattle police department He was responsible for the policies, practices and customs of the
4 City of Seattle police department, as well as the hiring, screening, training, supervising,
5 disciplining, counseling and control of the police officers under his command
6

7 15 At all times material to this complaint, defendant Stamper was an agent and an
8 employee of defendant City of Seattle, and was acting within the scope of his employment and
9 under color of the laws of the State of Washington

10 16 Defendant Stamper is sued in his individual capacity and in his official capacity
11 as an agent and employee of defendant City of Seattle
12

13 17 At all times material to this complaint, defendant John Doe was employed as
14 a police officer by defendant City of Seattle At all times material to this complaint, defendant
15 John Doe was an agent and employee of defendant City of Seattle and was acting within the
16 scope of his employment with the City of Seattle, under color of the laws of the State of
17 Washington
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19 18 Defendant John Doe is sued in his individual capacity and in his official
20 capacity as an agent and employee of defendant City of Seattle
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FACTUAL ALLEGATIONS

19 During the week of November 29-December 3, 1999, the World Trade Organization (WTO) held meetings in downtown Seattle

20 Thousands of people gathered in the streets of Seattle to peacefully protest the policies of the WTO, contending that such policies are in conflict with American laws protecting the environment, labor, and human rights

21 During the WTO week, police tear-gassed, pepper-sprayed and/or arrested numerous peaceful protestors, innocent bystanders, and members of the media

22 On November 30, 1999, defendant City of Seattle sent officers of the Seattle police department to the downtown area of Seattle. The officers patrolled the streets, dressed in riot gear.

23 Defendant City of Seattle provided its police officers with what is believed to be pepper spray to use against citizens in the downtown area

24 Pepper spray is a dangerous chemical weapon.

25 At approximately 5:30 p.m. in the afternoon of November 30, 1999, plaintiff David Potter was standing on the sidewalk near the Independent Media Center located at 1415 Third Avenue

26 Plaintiff was on the scene as a video photographer. He displayed a press pass on a cord around his neck, chest-high

27 Plaintiff carried his video camera and filmed police and civilians in the area

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2 28 Without warning, defendant John Doe fired chemical spray, believed to be
3 pepper spray, at plaintiff as he photographed

4 29 Plaintiff's face, ears and eyes were drenched in the chemical spray Plaintiff
5 experienced immediate, intense pain, fear and temporary blindness

6 30 Neither defendant John Doe nor any of the other police officers present
7 provided or attempted to provide any first aid to plaintiff.
8

9 31 Defendants failed to properly supervise defendant John Doe

10 32 Defendants failed to train defendant John Doe not to fire chemical weapons at
11 press photographers
12

13 33 Defendants failed to provide their officers deployed on November 30, 1999
14 with adequate food, water and opportunities for rest

15 34 As a result of the acts and omissions of defendants, plaintiff suffered personal
16 injuries including, but not limited to, bodily injury, pain and suffering, emotional distress, fear
17 and other consequential damages
18

19 FIRST CAUSE OF ACTION
20 VIOLATION OF THE FIRST AMENDMENT

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22 35 Plaintiff hereby incorporates and realleges as if fully set forth herein each and
23 every allegation of paragraphs 1 through 34

24 36 The acts and omissions of defendants herein were done under color of state law,
25 custom or usage
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2 37 Plaintiff David Potter had a federally-protected right, under the freedom of
3 speech, press and assembly provisions of the First Amendment to the United States
4 Constitution, to be present in downtown Seattle and to photograph the contacts between police
5 officers and citizens during the WTO-related protests and gatherings

6
7 38 The acts and omissions of the defendants herein proximately caused the
8 deprivation of the First Amendment rights of the plaintiff

9 39 As a proximate result of the acts and omissions of defendants and deprivation
10 of plaintiff's First Amendment rights, plaintiff suffered personal injuries as set forth
11 hereinabove
12

13 SECOND CAUSE OF ACTION
14 VIOLATION OF THE FOURTH AMENDMENT
15 PROHIBITION AGAINST UNREASONABLE SEIZURES

16 40 Plaintiff hereby incorporates and realleges as if fully set forth herein each and
17 every allegation of paragraphs 1 through 39

18 41 The acts and omissions of defendants were performed under color of state law,
19 custom or usage
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21 42 David Potter was seized, for purposes of the Fourth Amendment to the United
22 States Constitution, by the acts and omissions of defendants set forth herein

23 43 David Potter had a federally-protected right, under the Fourth Amendment, not
24 to be subjected to an unreasonable seizure
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2 44 The acts and omissions of defendants herein proximately caused the deprivation
3 of the Fourth Amendment rights of David Potter

4 45 As the proximate result of the acts and omissions of defendants and deprivation
5 of plaintiff's Fourth Amendment rights, plaintiff suffered personal injuries as set forth
6 hereinabove
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9 THIRD CAUSE OF ACTION
10 VIOLATION OF THE FOURTH AMENDMENT
11 PROHIBITION AGAINST THE USE OF UNREASONABLE FORCE

12 46 Plaintiff hereby incorporates and realleges as if fully set forth herein each and
13 every allegation of paragraphs 1 through 45

14 47 The acts and omissions of defendants herein were done under color of law,
15 custom or usage

16 48 David Potter was seized, for purposes of the Fourth Amendment to the United
17 States Constitution, by the acts and omissions of defendants as set forth herein

18 49 David Potter had a federally-protected right, under the Fourth Amendment, not
19 to be subjected to the use of unreasonable force against his person
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21 50 As a proximate result of the acts and omissions of defendants and the
22 deprivation of plaintiff's Fourth Amendment rights, plaintiff suffered personal injuries as set
23 forth hereinabove
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FOURTH CAUSE OF ACTION
VIOLATION OF THE FOURTEENTH
AMENDMENT DUE PROCESS CLAUSE

51 Plaintiff hereby incorporates and realleges as if fully set forth herein each and every allegation of paragraphs 1 through 50

52 The acts and omissions of defendants herein were performed under color of state law, custom or usage

53 David Potter had federally-protected rights, under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, to remain in a public place of his choice and the right to move from one place to another, in order to observe and photograph the actions of the police and the citizens in downtown Seattle

54 The acts and omissions of defendants herein proximately caused the deprivation of plaintiff's Fourteenth Amendment rights

55 As a proximate result of the acts and omissions of defendants, plaintiff suffered personal injuries as set forth hereinabove

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FIFTH CAUSE OF ACTION
MUNICIPAL LIABILITY OF THE CITY OF SEATTLE

56 Plaintiff hereby incorporates and realleges as though fully set forth herein each and every allegation of paragraph 1 through 55

57 At all times material to this complaint, defendant City of Seattle, by and through its mayor, defendant Schell, and/or its chief of police, defendant Stamper, had in

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2 effect certain explicit and *de facto* policies, practices and customs which were applied to the
3 treatment of civilians in downtown Seattle during the WTO meetings, including the use of
4 chemical weapons against innocent civilians such as plaintiff David Potter

5 58 For purposes of the incident described herein, it was the policy, custom and
6 practice of the City of Seattle to utilize unreasonable force in violation of the First, Fourth and
7 Fourteenth Amendment rights of the plaintiff, set forth hereinabove
8

9 59 It was further the policy of the City of Seattle, by and through defendants Schell
10 and Stamper, to approve, acquiesce, condone and ratify the use of unreasonable force in
11 violation of the First, Fourth and Fourteenth Amendment rights of the plaintiff in the incident
12 described hereinabove
13

14 60 For purposes of liability for said policies, practices and/or customs, Norm
15 Stamper was the authorized policy-maker on police matters, and his decisions, explicit and *de*
16 *facto*, were and are binding on defendant City of Seattle
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18 61 The policy, practice and custom of approving, acquiescing in, condoning and/or
19 ratifying the use of unreasonable force in violation of the First, Fourth and Fourteenth
20 Amendment rights of the plaintiff in the incident described herein was a deliberate choice by
21 defendant City of Seattle, by and through its mayor and/or chief of police
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23 62 These policies, practices and customs were maintained with deliberate, reckless
24 and/or callous indifference to the constitutional rights of the plaintiff as set forth hereinabove
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2 63 The above-described policies, practices and customs of defendant City of Seattle
3 proximately caused the deprivation of the First, Fourth and Fourteenth Amendment rights of
4 the plaintiff

5 64 As a proximate result of the above-described policies, practices and customs
6 of defendant City of Seattle, and as a result of the deprivation of plaintiff's First, Fourth and
7 Fourteenth Amendment rights, plaintiff suffered personal injuries as set forth hereinabove
8

9 65 At all times material herein, defendants City of Seattle, Schell and Stamper had
10 a duty, under the United States Constitution, to properly supervise their police officers
11

12 66 At all times material herein, defendants had a duty, under the Fourth
13 Amendment to the United States Constitution, to train their police officers not to attack
14 innocent people with chemical weapons, including pepper spray

15 67 Defendants failed to properly supervise defendant John Doe

16 68 Defendants failed to properly train defendant John Doe

17 69 The above-described failures to supervise and to train were maintained with
18 deliberate, reckless and/or callous indifference to the constitutional rights of the plaintiff as
19 set forth hereinabove
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21 70 The above-described failures by defendants to properly supervise and to
22 properly train defendant John Doe proximately caused the deprivation of the constitutional
23 rights of the plaintiff as set forth hereinabove
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2 71 As a proximate result of the failure of defendants to properly supervise and
3 train, and as a result of the deprivation of plaintiff's constitutional rights, plaintiff suffered
4 personal injuries as set forth hereinabove
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6 SIXTH CAUSE OF ACTION.
7 ASSAULT AND BATTERY

8 72 Plaintiff hereby incorporates and realleges as if fully set forth herein each and
9 every allegation of paragraphs 1 through 71
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11 73 Defendants assaulted and battered plaintiff David Potter

12 74 Defendant City of Seattle is liable for the actions of defendant John Doe under
13 the doctrine of *respondeat superior*

14 75 As a direct, proximate and foreseeable result of the wrongful actions described
15 hereinabove, plaintiff has been damaged in an amount in excess of the minimum jurisdiction
16 of this Court
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18 PUNITIVE DAMAGES ALLEGATIONS

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20 76 Plaintiff hereby incorporates and realleges as if fully set forth herein each and
21 every allegation of paragraphs 1 through 75
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23 77 The acts and omissions of defendants herein were motivated by evil motive or
24 intent, or involved reckless or callous indifference to the constitutional rights of the plaintiff
25 as set forth hereinabove
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2 78 Defendant City of Seattle should indemnify defendant John Doe for any
3 damages awarded against him at the trial of this action, including punitive damages

4 79 Defendant City of Seattle is responsible for the fault of defendant John Doe
5 because defendant John Doe was acting as an agent or servant of the City Defendant City of
6 Seattle is liable for all damages awarded against defendant John Doe, including punitive
7 damages RCW 4 22 070(1)(a)
8

9 80 Since plaintiff David Potter is a fault-free plaintiff, defendant City of Seattle is
10 jointly and severally liable for all damages awarded, including punitive damages RCW
11 4 22.070(1)(b)
12

13 PRAYER FOR RELIEF
14

15 WHEREFORE, plaintiff prays for relief as follows

16 Compensatory Damages The defendants should be required to pay compensatory
17 damages in an amount to be proven at trial
18

19 Punitive Damages The defendants should be required to pay punitive damages in an
20 amount to be proven at trial pursuant to Title 42, United States Code, § 1983, Title 42, United
21 States Code, § 1988, RCW 4 22 070(1)(a), and RCW 4 22 070(1)(b)

22 Attorneys' Fees Defendants should be required to pay the plaintiff's reasonable
23 attorneys' fees and costs pursuant to Title 42, United States Code, § 1988
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2 Other Relief The Court should grant the plaintiff such other and further relief as the
3 Court deems just and equitable

4 DATED this the 27th day of November, 2001

5 Respectfully submitted,

6 MUESTER & KOENIG

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8
9 By: 

10 JOHN R. MUESTER

11 WSBA No 6237

12 Attorney at Law

13 Of Attorneys for Plaintiff David F Potter